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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re L.T. et al., Persons Coming Under the  
Juvenile Court Law.

CONTRA COSTA COUNTY BUREAU  
OF CHILDREN & FAMILY SERVICES,

Plaintiff and Respondent,

v.

O.T.,

Defendant and Respondent;

L.T. et al,

Minors and Appellants.

A122050

(Contra Costa County  
Super. Ct. Nos. J06-01884 and  
J06-01885)

In this dependency case, at the 18-month status review hearing, the juvenile court declined to set a hearing under Welfare and Institutions Code section 366.26,<sup>1</sup> and instead ordered minors H.T. and L.T. placed in long-term foster care. The minors appealed, arguing that because there was not clear and convincing evidence they were not proper subjects for adoption, the court was required to order a section 366.26 hearing. The minors' mother filed a respondent's brief in support of the juvenile court's order.

<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code unless otherwise specified.

Respondent Contra Costa County Bureau of Children and Family Services (CFS) then filed a motion to dismiss this appeal as moot because the juvenile court, at another review hearing, scheduled a section 366.26 hearing to be held on June 4, 2009. For the reasons set forth in this opinion, we dismiss the appeal as moot.

### **STATEMENT OF THE CASE AND FACTS**

As a full discussion of the procedural and factual history of the case is unnecessary to the single question before us, only the relevant facts will be stated. CFS filed a petition on October 24, 2006, alleging that H.T and L.T., then seven years old and four years old, respectively, came within the provisions of section 300, subdivisions (b), (d), and (g), in that the mother had left them in a home where relatives were aware of sexual abuse to the minors' teenage aunts by the minors' great uncle, and in the care of their grandfather, who had a drug problem. The minors were declared dependent children of the court under section 300, subdivisions (b), (d) and (g), on January 16, 2007. The children were placed in foster care, with caretakers who "had extensive experience working with difficult children." Reunification services for the mother were continued at the six- and 12-month review hearings.

The 18-month status review hearing was held on May 5, 2008. CFS recommended termination of reunification services for the mother and placement in long-term foster care. The minors' attorney argued the court should set a section 366.26 hearing because the children were adoptable. Counsel for the mother argued that the mother had only recently been able to seriously tackle important issues and was making tremendous progress. The court followed CFS's recommendation for long-term foster care, stating that it was persuaded the mother had just begun seriously addressing her problems and had made "substantial strides," it did not agree the children were adoptable, and there was a relationship between the mother and the children. The court expressed hope that the mother would get herself "together" to the point that a section 388 petition for modification might be considered.

The minors filed a notice of appeal on July 2, 2008. Their opening brief was filed on December 8, 2008. On February 27, 2009, mother filed her respondent's brief. On March 9, 2009, CFS filed a motion to dismiss the appeal as moot.

### **DISCUSSION**

The minors' appeal argues that the court erred in failing to set a section 366.26 hearing to evaluate permanent plans because there was insufficient evidence to support a conclusion that they were not adoptable. At the time of the trial court hearing, under section 366.22, subdivision (a), the only circumstance in which the court could order a child to remain in foster care rather than scheduling a section 366.26 hearing to determine whether adoption, guardianship or long-term foster care is the appropriate plan for the child was when the court found "by clear and convincing evidence" that there was a "compelling reason" for "determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship."<sup>2</sup>

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<sup>2</sup> At the time of the hearing in this case, section 366.22, subdivision (a), provided, in pertinent part, that if the child is not returned to the parent or legal guardian at the 18-month hearing, the court "shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason, as described in paragraph (3) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in foster care."

Amendments to section 366.22 that took effect on January 1, 2009, permit the court at an 18-month hearing an additional alternative in specified circumstances: The court may continue the case for an additional six months if it finds by clear and convincing evidence that the child's best interests would be served by providing additional reunification services to a parent or legal guardian who is making significant progress in a substance abuse treatment program or recently has been discharged from

Minors argue this standard was not met and, therefore, the case must be remanded with instructions for the juvenile court to order a section 366.26 hearing. Minors also ask this court to address a “procedural problem in the dependency scheme.” Under the governing statutes, when a court orders a section 366.26 hearing, it must also direct preparation of an assessment of a number of factors including the minor’s adoptability. (§§ 366.21, subd. (i)(1), 366.22, subd. (c)(1).) Minors argue that such an assessment should be required not just when a section 366.26 hearing is ordered, but *before* a court can decline to order a section 366.26 on the ground that the minor is not adoptable.

Mother’s respondent’s brief argues the court’s decision to order long-term foster care rather than set a section 366.26 hearing was correct because the minors were not proper subjects for adoption due to their behavioral and psychological problems; it was in their best interests to maintain their relationship with their mother; the mother had made substantial progress on her case plan; and there was no one willing to adopt the children. Mother also argues the governing statutes do not require preparation of a preliminary adoption assessment when CFS recommends long-term foster care as the permanent plan but only after the court orders a section 366.26 hearing.

CFS, in its motion to dismiss the appeal, argues the minors’ appeal is moot because on February 18, 2009, the trial court held another status review hearing and ordered a section 366.26 hearing. The time within which any party could have filed a notice of intent to file a writ petition seeking review of the February 18 order has passed. (Cal. Rules of Court, rule 8.450(e).)

“An appellate court will not review questions which are moot and only of academic importance, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be affected by the decision either way. (*TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1385.) An appeal

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incarceration or institutionalization and is making significant progress in establishing a safe home for the child’s return. (§ 366.22, subd. (b).)

becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316; *Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863.) On a case-by-case basis, the reviewing court decides whether subsequent events in a dependency case have rendered the appeal moot and whether its decision would affect the outcome of the case in a subsequent proceeding. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.)” (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054-1055.)

It is apparent that the minors’ appeal is moot. The relief sought in the appeal is an order requiring the juvenile court to set a section 366.26 hearing. The juvenile court has already done so. Even if the trial court was wrong in failing to order the section 366.26 hearing before, it has now given the minors the only relief this court could have afforded them.

Respondent mother opposes the motion to dismiss, but offers no persuasive argument. Mother complains that CFS has not filed authority in support of its request that we judicially notice the minute orders documenting the orders made at the February 18, 2009 hearing, but these are documents we can judicially notice under Evidence Code section 452. Mother argues the juvenile court did not give minors the relief they seek in their appeal because what they are seeking is a permanent plan of adoption. This may or may not be the ultimate relief the minors seek, but the only issue involved in their appeal is whether the trial court must schedule a section 366.26 hearing. Finally, mother asks this court to exercise our discretion to consider issues in the appeal that are likely to recur and are of substantial public interest (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404)—specifically, the minors’ argument that an adoption assessment must be prepared before a trial court can determine minors are not proper subjects for adoption. Interestingly, in her respondent’s brief, mother asks this court to strike the minors’ argument on this point as unsupported by argument or citation to

authority, and argues the remedy for the alleged deficiency in the dependency statutes is legislative action beyond the function of this court. We decline to address this issue, which can have no impact on the present case.

The appeal is dismissed.

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Kline, P.J.

We concur:

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Haerle, J.

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Richman, J.